

**AREA PLAN COMMISSION OF TIPPECANOE COUNTY
EXECUTIVE COMMITTEE
MINUTES OF PUBLIC HEARING**

DATE..... September 3, 2003
TIME..... 4:30 P.M.
PLACE CO. OFFICE BLDG.
20 N. 3RD STREET
LAFAYETTE IN 47901

MEMBERS PRESENT

Karl Rutherford
Jan Mills
David Williams
Jeff Kessler
Jack Rhoda
Mark Hermodson

MEMBERS ABSENT

James Miller

STAFF PRESENT

James Hawley
Sallie Fahey
Kathy Lind
Jay Seeger, Attorney
Michelle D'Andrea

Jack Rhoda called the meeting to order.

I. APPROVAL OF MINUTES

Jeff Kessler moved to approve the minutes of the August 6, 2003, Executive Committee public hearing as submitted. Karl Rutherford seconded and the motion carried by voice vote.

II. NEW BUSINESS

None.

III. PUBLIC HEARING

Jeff Kessler moved that the Comprehensive Plan for Tippecanoe County, the Unified Zoning Ordinance of Tippecanoe County, and the Unified Subdivision Ordinance for Tippecanoe County, Indiana are hereby entered by reference into the record of each agenda item. Karl Rutherford seconded and the motion carried by voice vote.

Jeff Kessler moved to continue **S-3378—RANDALL RIDGE SUBDIVISION (MINOR-SKETCH)** to the September 17, 2003 Area Plan Commission regular meeting. Karl Rutherford seconded and the motion carried by voice vote.

A. SUBDIVISIONS

1. **S-3290—RED HAWK RIDGE SUBDIVISION (MINOR-SKETCH):** Petitioners are seeking primary approval for a 4-lot subdivision on 15.0 acres, located southwest of the CR 250 N and CR 1025 E intersection, in Perry 12 (SW) 23-3. CONTINUED FROM THE AUGUST EXECUTIVE COMMITTEE MEETING. FINAL CONTINUANCE.

Jeff Kessler moved to hear and vote on the above-described request. Karl Rutherford seconded the motion.

Sallie Fahey stated that because of the flood plain issues, the staff had given the petitioner 2 options. She informed the Committee that the petitioner chose to have the case heard with extra conditions imposed and extra advertising. She presented slides of the location map, aerial photo, sketch plan and flood plain sketch plan. She recapped the staff report and the following conditions:

1. The Executive Committee can continue this case to its next scheduled meeting or to the next Area Plan Commission meeting. This would buy petitioners an extra week or two to meet with their surveyor and possibly move lot lines so that four buildable lots can still be achieved; or
2. Conditional primary approval, contingent on the following:

FINAL PLAT – The following items shall be part of the Secondary Application and Final Plat approval:

1. Lot 1 shall be relabeled as "Outlot A" and noted as unbuildable due to the presence of the 100-year flood plain on the lot. The other lots shall be relabeled as 1, 2, and 3.
2. A "No Vehicular Access" statement shall be platted along the CR 250 N right-of-way line that meets the County Highway Department's revised recommendations for placement of a shared drive.
3. If there is a mortgage on this property, a recorded partial release or written acknowledgment from the mortgage company must be obtained in order to dedicate the necessary right-of-way.
4. All existing easements, covenants or restrictions shall be shown and referenced with the corresponding recording information (Document Number and date recorded).
5. All required building setbacks shall be platted, including the 25' setback from the Flood Plain zoning district.
6. The Regulatory Flood Elevation and Boundary for the unnamed tributary to Wildcat Creek Flood Plain shall be shown. It shall also be described and certified as specified in Unified Zoning Ordinance, Section 2-26-17.
7. The street addresses and County Auditor's Key Number shall be shown.

SUBDIVISION COVENANTS – The following items shall be part of the subdivision covenants:

8. The "No Vehicular Access" restriction shall be made enforceable by the Area Plan Commission and irrevocable by the lot owners.
9. If the Health Department requires perimeter drainage systems that empty into the county road ditch within the right-of-way, a covenant shall be added to the plat that states, "A perimeter drain permit to discharge into the County right-of-way is required for Lots 2 and 3."

Ron Wharry 52 West Clinton Street, Frankfort Street, IN, stated that the petitioner understood the DNR determination, agreed to all the conditions and to consider lot #1 as an unbuildable outlot. He asked for approval.

Russell Timmons, 6745 East 700 South, Lafayette, IN, stated that he owned the land adjacent to the proposed subdivision. He explained that when he purchased his property in 1978 the flood plain elevation for his land was 616.1' and the upstream elevation was 621.5'. He pointed out that those elevations were in conflict with the elevations shown on the proposed subdivision. He stated that according to these numbers the entire subdivision should be in the flood plain. He asked if the flood plain has been changed since 1978.

James Hawley stated that this was a limited study. He explained that DNR used 2-foot contours, which was not available in 1978. He mentioned that this study was more accurate than the 1978 study. He pointed out that the current study might work out to the advantage of Russell Timmons.

Ron Wharry stated that in 1978, DNR most likely used a different set of contours, which would account for several differences in feet. He mentioned that they also have access to digital maps that they did not have in 1978.

Russell Timmons asked if he could obtain upstream elevations from the proposed subdivision in order to determine where the flood plain was on his property.

James Hawley suggested that Russell Timmons obtain a copy of the contours from GIS and a copy of the topography and aerial photos from MITS, which will give him a more accurate flood plain determination.

Russell Timmons informed the Committee that he had a survey completed 2 years ago, which showed a gap in title for a small piece of land in between the petitioners' property and his own.

Ron Wharry stated that he also found that gap in between the two properties. He said that currently the petitioners are using that piece of land because there is a difference in what their deed says and where the fence was placed.

Jack Rhoda asked if there were future buildings planned for that area.

Ron Wharry replied negatively.

Russell Timmons stated that the fence did not correspond with the property line.

Ron Wharry replied affirmatively.

Jack Rhoda and Ron Wharry agreed that the gap of land would have to be worked out between the petitioner and Russell Timmons.

Russell Timmons stated that there was another dispute from James Buck, who owns the property to the west.

Ron Wharry stated that he was aware of that case and it was settled by moving the boundary line.

Russell Timmons stated that the case was still open.

Jack Rhoda pointed out that the James Buck dispute did not have anything to do with this case.

Ron Wharry replied affirmatively. He explained that it shows the relationship between the perceived boundary lines and the actual deed descriptions.

Russell Timmons pointed out that if there is a question of ownership, it should be resolved before the subdivision is approved.

Ron Wharry stated that the dispute from James Buck is with the Timmons property, not with the petitioners.

Karl Rutherford referred to the topographic map and pointed out that according to the elevations listed and lines shown, there should be a lot more area in the flood plain.

Ron Wharry explained that in between lots 1 and 2 the ground rises higher, creating a ridge or natural dam.

Karl Rutherford asked for clarification that if the water can't get to the area, then it couldn't get out, thus creating the potential for a lake.

Ron Wharry stated that there could be some area in the ditch right-of-way that might allow some drainage. He pointed out that there have never been any crops lost in this area. He mentioned that there has never been any water in the ditch itself. He stressed that this is what DNR has calculated and did not find any other problems.

Karl Rutherford pointed out that according to the numbers, the other lots should also be in the flood plain.

Ron Wharry pointed out that from one end of the property to the other the elevations drop. He explained that creates more area in lot #2 that has higher elevation.

Karl Rutherford mentioned that it was not that much area that was higher.

Ron Wharry stated that going north the land decreases in elevation and flood plain elevation.

Karl Rutherford referred to the topographical map and pointed out that the numbers listed do not prove there is a ridge or that water cannot get in. He stated that if lot #1 has to be restricted, then so should lot #2, according to the map.

Ron Wharry explained that it was hard to see from the topographical map because 2-foot contours were used.

Karl Rutherford asked for the flood plain number that is considered unbuildable. He stated that it looks like $\frac{3}{4}$ of the lots should be in the flood plain, with the only exception being the existing house. He said that given the recent problems the County has had with flooding and flood plain, he is not in favor of this petition. He stated that he is not in favor of approving more property that is unbuildable, unless they can prove that this is not in the flood plain.

Jeff Kessler agreed with Karl Rutherford. He said that at the very least this should be continued until further proof is provided that this is not in the flood plain.

James Hawley presented documentation from DNR showing their determination of the flood plain. He pointed out that DNR is the only authority on flood plain and they decided this, not Ron Wharry. He stated that DNR is satisfied with this determination.

Several members discussed where the line ran and the elevations attached to them.

Karl Rutherford asked if DNR looked at the whole tract.

James Hawley explained that the map came from DNR, so they were looking at the entire tract.

Ron Wharry stated that DNR was provided with the mapping for the entire subdivision.

James Hawley stressed that DNR is the only authority for flood plain in the State of Indiana. He explained that any determination they find must be adhered to.

Jack Rhoda asked what the purpose would be to continue this case, if DNR has already ruled on it.

James Hawley reiterated that this is the DNR approval and it would not change.

Karl Rutherford stated that the documents submitted do not match up with the DNR determination.

Jay Seeger stated that the Committee could approve the petition, deny the petition, which is limited on subdivisions or continue it to the next APC meeting.

James Hawley stated that the response from DNR probably would not be any different and would not be in by the next APC meeting.

Ron Wharry stated that it has taken all summer for them to get the determination from DNR. He said that he could not estimate when he could get another response from DNR because it would depend on the information that DNR has.

Jeff Kessler stated that it would be better to wait, than go ahead and vote and regret it later.

Ron Wharry stated that he would not be able get a response from DNR by the next APC meeting, but might be able to by the next Executive Committee meeting.

Karl Rutherford moved to continue **S-3290—RED HAWK RIDGE SUBDIVISION (MINOR-SKETCH)** to the October 1, 2003 Executive Committee meeting. James Miller seconded and the motion carried by voice vote.

James Hawley mentioned that the Committee should ask Ron Wharry to contact DNR for further documentation.

Ron Wharry stated that he would forward the Committee's question to DNR and ask them for a letter of explanation.

Jack Rhoda recessed the meeting at 5:00 pm... resumed at 5:06 pm.

IV. APPROVAL OF THE SEPTEMBER 17, 2003 APC PUBLIC HEARING AGENDA PUBLIC HEARING

A. REZONING ACTIVITIES

Jeff Kessler moved that the following rezone petitions be placed on the September 17, 2003 Area Plan Commission Public Hearing Agenda:

Z-2133—O'MALLEY-WHITE DEVELOPMENT, INC. (NB TO GB)
Z-2139—MANN PROPERTIES, LLP (I3 TO GB)
Z-2142—JESCO INVESTMENT CORP. (PDRS, GB & R3 TO PDMX)
Z-2143—WEXFORD DEVELOPMENT, INC. (CB TO PDMX)
Z-2144—AREA PLAN COMMISSION (Southwest Lafayette Zoning Map) (R1, R1A, R1B, R2, R3, NB, NBU, OR, MR, GB, HB, I1, I2, I3, A, AA, AW, FP, PDRS, PDNR, PDMX, PDCC to R1, R1A, R1B, R1U, R2, R2U, R3, R3U, NB, NBU, OR, MR, GB, HB, I1 I2, I3, A, AA, AW, FP, PDRS, PDNR, PDMX, PDCC)
Z-2145—CENTRAL INDIANA REGIONAL BLOOD CENTER, INC. (MR TO NB)
Z-2146—TERRY ROBBINS (A TO R1A)
Karl Rutherford seconded and the motion carried by voice vote.

C. SUBDIVISIONS

Jeff Kessler moved that the following subdivision petitions be placed on the September 17, 2003 Area Plan Commission Public Hearing Agenda at petitioner's request, placement thereon being without reference to compliance or non-compliance with the adopted subdivision ordinance:

S-3336 - SHANGRILA SUBDIVISION (MAJOR-PRELIMINARY PLAT)
S-3375 - HICKORY RIDGE SUBDIVISION (MAJOR-PRELIMINARY)
S-3384 - LITTLE MINOR SUBDIVISION (MINOR-SKETCH)
S-3385 - SWAN HOLDINGS SUBDIVISION (MINOR-SKETCH)

Karl Rutherford seconded and the motion carried by voice vote.

V. REVIEW AND APPROVAL OF THE SEPTEMBER ABZA PUBLIC HEARING AGENDA

Jeff Kessler moved to place the following petitions on the September 24, 2003 Area Board of Zoning Appeals Public Agenda:

BZA-1640—REGINALD L. & LAURA J. ROY
BZA-1645—KOMARK BUSINESS COMPANY
BZA-1646—NEW DIRECTIONS, INC.
BZA-1647—JOHN M. & MIMI PEZZUTO

Karl Rutherford seconded and the motion carried by voice vote.

Jeff Kessler that the following BZA petitions for Special Exception do not substantially, adversely affect the Comprehensive Plan:

BZA-1646—NEW DIRECTIONS, INC.

Karl Rutherford seconded and the motion carried by voice vote.

VI. DETERMINATION OF VARIANCES

A. Lafayette Division of the Area Board of Zoning Appeals

Jeff Kessler moved that the following requests for variance from the Unified Zoning Ordinance are not requests for use variance, prohibited from consideration by ordinance and statute:

#2003-34—ICE CREAM SPECIALTIES, INC.
#2003-35—KYLE BACH
#2003-36—DAVID M. & MARVA J. HURTT
#2003-37—ANN & DENNIS MARTIN
#2003-38—BURGER KING

Karl Rutherford seconded and the motion carried by voice vote.

Jeff Kessler moved that with regard to the following petitions, the sign ordinance be strictly adhered to:
#2003-35—KYLE BACH and **#2003-38—BURGER KING.** Karl Rutherford seconded and the motion carried by voice vote.

VII. REVIEW AND APPROVAL OF THE AUGUST BUDGET REPORT

Jeff Kessler moved to accept the August 2003 Budget Report as submitted. Karl Rutherford seconded and the motion passed by voice vote.

VIII. OTHER BUSINESS

IX. ADJOURNMENT

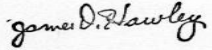
Jeff Kessler moved to adjourn the meeting. Karl Rutherford seconded and the motion carried by voice vote. The meeting adjourned at 5:10 P.M.

Respectfully submitted,



Michelle D'Andrea
Recording Secretary

Reviewed by,



James D. Hawley
Executive Director